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13 CHURCH OF SCIENTOLOGY INTERNATIONAL

14 UNITED STATES BANKRUPTCY COURT  
15  
16 NORTHERN DISTRICT OF CALIFORNIA

17 In re ) Case No. 95 10911 aj  
18 ) Chapter 7  
19 GERALD ARMSTRONG, )  
20 ) Adv. Pro. No. 95 1164  
21 Debtor. )  
22 ) Trial Date: February 13, 1996  
23 )

24 CHURCH OF SCIENTOLOGY )  
25 INTERNATIONAL, a California non-profit )  
26 religious corporation, )  
27 )

28 Plaintiff, )

v. )

GERALD ARMSTRONG, )

Defendant. )

CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION  
IN LIMINE TO EXCLUDE PROPOSED TESTIMONY OF MICHAEL FLYNN,  
JOSEPH YANNY AND FORD GREENE

I.

INTRODUCTION

Plaintiff Church of Scientology International (the "Church") hereby moves this Court for an Order excluding all testimony by three of Armstrong's proposed witnesses: Michael Flynn, Joseph Yanny and Ford Greene. All three are attorneys. Mr. Flynn is from Boston, Massachusetts and represented Armstrong during the litigation which preceded the 1986 settlement, and at the settlement meetings. His testimony is unnecessary because all of the issues concerning the making of the settlement agreement have already been decided by the state court.<sup>1</sup> Mr. Yanny is a Los Angeles attorney who formerly represented the Church. His testimony is unnecessary because it concerns several of Armstrong's breaches of the settlement agreement, all of which have also already been decided by the Superior Court. Mr. Greene was Armstrong's attorney during some of the state court litigation, and has been Armstrong's employer throughout this bankruptcy action. The Church does not anticipate that he can offer any testimony which is relevant or necessary to the determination of the narrow issues to be tried herein.

II.

**THE TESTIMONY OF THESE WITNESSES IS UNNECESSARY, IRRELEVANT,  
POTENTIALLY PREJUDICIAL, AND WOULD UNDULY  
PROLONG THESE PROCEEDINGS**

The factual and legal issues presented by the instant adversary proceeding generally concern three narrow and specific questions. As noted in other motions in limine concurrently filed, the evidence which would aid this Court in resolving the above issues is quite limited.

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<sup>1</sup> See the Church's concurrently filed Motion in Limine to Exclude Evidence Pertaining To Issues Already Decided In State Court Proceedings.



1 On January 26, 1996, Armstrong filed his Ex Parte Application For An Order  
2 Shortening Time For Hearing On Motion For Order Concerning Trial Testimony And  
3 Continuing Trial (the "Armstrong's Application"). Armstrong's Application sets forth a  
4 lengthy argument concerning the purpose for which Armstrong intended to call certain  
5 specified witnesses. Thereafter, he sent to plaintiff a proposed witness list, which contains 6  
6 names. Three of the six proposed witnesses -- Mr. Flynn, Mr. Yanny and Mr. Greene -- have  
7 no personal knowledge relevant to the narrow issues presented by the adversary complaint, as  
8 amended by the Church.  
9

10 Armstrong's articulated purpose in calling these witnesses is to have them testify  
11 concerning such things as discussions between Armstrong and Mr. Flynn in 1986 at the time  
12 that he signed the settlement agreement; Mr. Flynn's personal litigation against the Church  
13 (also settled in 1986); Armstrong's assistance to Mr. Yanny in anti-Church litigation in  
14 violation of the settlement agreement in 1991; Mr. Yanny's animosity toward the Church, his  
15 former client; and Mr. Greene's hiring of Armstrong to aid him in anti-Church litigation in  
16 1991, in violation of the agreement. From each of these attorneys, Armstrong also apparently  
17 hopes to elicit general comments concerning other litigation against the Church involving other  
18 parties, as part of his effort to demonstrate that the Church is "bad," making his wilful  
19 violations of his agreement with the Church "good."<sup>2</sup>  
20  
21

22 The proposed testimony of these witnesses, as presently articulated by Armstrong, does  
23 not meet the criteria of Federal Rule of Evidence 402 for relevance. It has no tendency to  
24 prove or disprove any fact that is of consequence to the determination of the action.  
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26 The superior court has already ruled and the court of appeal has upheld that the  
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28 <sup>2</sup> Moreover, to the extent Armstrong wishes to examine Mr. Yanny concerning his representation of the Church that matter would be privileged.



1 settlement agreement is valid and enforceable. The superior court has ruled that Armstrong  
2 signed the agreement freely and voluntarily without duress; and that Armstrong repeatedly  
3 breached the agreement, necessitating a permanent injunction. Armstrong himself has offered  
4 the Court, in addition to these witnesses, six declarations which articulate the same reasons,  
5 excuses and justifications for his violations of the agreement which he offered to the state  
6 court and which the state court fully considered in granting the Church's four motions for  
7 summary adjudication. That court finally decided those issues, and they cannot be litigated  
8 again here. In Re Bugna, 33 F.2d 1054 (9th Cir. 1994). To the extent that Armstrong wishes  
9 to call these lawyers to present such evidence to this court, it is irrelevant, and must be  
10 excluded.  
11

12 Armstrong also offers these witnesses to testify as to alleged litigation strategies -- "war  
13 stories" -- concerning their own personal experiences in litigating other cases against the  
14 Church. This testimony, too, is irrelevant. The conduct of other litigation, whether by the  
15 Church or by Armstrong, is not an issue in this matter. It is offered solely for the purpose of  
16 prejudicing the Court against the Church, Fed. Rule of Evid. 402, 403 and would have the  
17 effect of creating a collateral second trial, as the Church would be required to rebut the  
18 testimony so offered, and demonstrate its factual falsity. As this court has already indicated  
19 that it has no intention of making this bankruptcy action "a trial on the merits of Scientology,"  
20 [Plaintiff's Proposed Ex. 11, Transcript of Proceedings, at 2], the testimony must be excluded.  
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III.

CONCLUSION

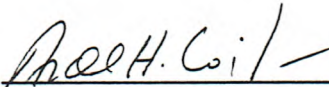
The only reasons Armstrong has articulated to call attorneys Flynn, Yanny and Greene as witnesses are to present evidence concerning matters which are irrelevant to this trial. Their testimony should be excluded.

Dated: February 13, 1996

Respectfully submitted,

WILSON, RYAN AND CAMPILONGO

By:



Andrew H. Wilson  
Shauna T. Rajkowski

Laurie J. Bartilson  
MOXON & BARTILSON

Attorneys for Plaintiff  
CHURCH OF SCIENTOLOGY  
INTERNATIONAL



PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

I am readily familiar with Wilson, Ryan & Campilongo's practice for collection and processing of correspondence for hand delivery.

On February 13, 1996, I caused to be hand served the attached **CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE PROPOSED TESTIMONY OF MICHAEL FLYNN, JOSEPH YANNY AND FORD GREENE** on the following in said cause, on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Gerald Armstrong  
715 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

I declare under the penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on February 13, 1996 at San Francisco, California.

  
COLLEEN Y. PALMER